

JACK T. THOMPSON

IBLA 82-647

Decided August 17, 1982

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application W 78286.

Affirmed.

1. Oil and Gas Leases Applications: Generally--Oil and Gas Leases:
Applications: Filing

An oil and gas lease application, form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

APPEARANCES: Michael D. Ferguson, Esq., El Paso, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Jack T. Thompson has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated March 2, 1982, rejecting his noncompetitive oil and gas lease application, W 78286, for failure to complete properly his simultaneous oil and gas lease application form in accordance with 43 CFR 3112.2-1(g). Applicant's application was drawn with first priority for parcel WY 7264 in the December 1981 simultaneous oil and gas lease drawing.

The basis for the BLM decision was appellant's failure to answer the questions on the back of his application form, items (d), (e), and (f), relating, respectively, to other parties in interest, assignments, and multiple filings. 1/

Appellant contends that "[b]ecause a failure to mark 'Yes' or 'No' on the relevant portions of application Form 3112.1 is nowhere mentioned as a

1/ Items (d) through (f) are a series of questions, each of which is followed by boxes to be checked "Yes" or "No" in response. The questions

fatal impropriety in 43 C.F.R. § 3112.2, it should not be the basis for rejection under 43 C.F.R. § 3112.6-1(a)." Appellant further contends that the "failure to mark the 'Yes' or 'No' boxes * * * creates a reasonable inference that [a]pplicant has responded negatively to the questions contained on the form." Appellant states that because three of his lease applications submitted simultaneously were received by BLM at the same time, one of which had been fully executed, BLM should have drawn an inference that the two incomplete applications were similarly qualified. Appellant further states that with the modification of new application form 3112.6a the "Yes" and "No" blanks have been eliminated and replaced by negative statements to which no response is required and therefore BLM should have assumed no response to be a negative response.

Appellant also cites the case of Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980), wherein the court held that the Department may not reject a drawing entry card (now a simultaneous oil and gas lease application form) for failure to enter the offeror's name in the proper order indicated by the instructions on the card--last name, first name, middle initial--where the Department's regulations do not specify the precise manner in which cards must be completed and where the Secretary has not applied such a rule consistently. However, Brick addresses the manner in which a card was completed, not the omission of necessary information as to applicant's qualifications to hold a lease.

[1] The applicable regulation, 43 CFR 3112.2-1(a), provides in relevant part: "An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart." (Emphasis added.) The application form clearly contemplates that items (d) through (f) would be checked on the application itself. The introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes)." (Original in italics.) Small boxes appear following each item to be checked in response. Although the application does contemplate that the names of other parties in interest, or amendment to one's previously filed statement of qualifications, may be submitted by attachment, the questions posed by items (d) through (f) are distinct issues.

fn. 1 (continued)

are:

"(d) Does any party, other than the applicant and those identified herein as other parties in interest, own or hold any interest in this application, or the offer or lease which may result?

"(e) Does any agreement, understanding, or arrangement exist which requires the undersigned to assign, or by which the undersigned has assigned or agreed to assign, any interest in this application, or the offer or lease which may result, to anyone other than those identified herein as other parties in interest?

"(f) Does the undersigned have any interest in any other application filed for the same parcel as this application?"

The introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes)." (Original in italics.)

Questions (d) through (f) are included in a list of questions on the application dealing with the applicant's qualifications to hold a lease and deal particularly with the circumstances of the execution of the application. The failure to disclose a party in interest to the lease application (question (d)) is a violation of the regulation at 43 CFR 3102.2-7; the assignment of an interest in the lease offer (question (e)) prior to lease issuance or lapse of 60 days after determination of priority is a violation of 43 CFR 3112.4-3; and any interest of the applicant in more than one application for the same parcel (question (f)) disqualifies the applicant under 43 CFR 3112.6-1(c).

BLM is not charged with having the intuition or the responsibility for completing an applicant's application form, nor is it authorized to do so. B. D. Price, 34 IBLA 41 (1978). The Board had consistently held that an applicant has not complied with 43 CFR 3112.2-1(a) where he has failed to answer questions (d) through (f) on the application form, and that failure to do so properly results in rejection of the application. Ottlin D. Hass, 61 IBLA 338 (1982), and cases cited therein.

Under 43 CFR 3112.6-1(a) any application which is not filed in accordance with 43 CFR 3112.2 must be rejected. 43 CFR 3112.2-1(a) requires that the lease application be "completed, signed and filed." 43 CFR 3112.2-1(g) requires that the application be "properly completed and signed." (Emphasis added.)

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

